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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

ROY HECK,

PETITIONER,

-vs-

JAMES HUMPHREY, DEARBORN COUNTY PROSECUTOR, ROBERT EWBANK, ATTORNEY, AND MICHAEL KRINOPH, INDIANA STATE POLICE INVESTIGATOR,

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE STATES OF ARIZONA, ALABAMA, ARKANSAS, CALIFORNIA, FLORIDA, IDAHO, ILLINOIS, KENTUCKY, MISSISSIPPI, MONTANA, NEVADA, NEW JERSEY, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED[1]

Whether a prisoner may attack the legality of his state court conviction in a federal action through 42 U.S.C. § 1983, seeking declaratory and monetary relief, without first exhausting state remedies.

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1. This brief addresses only the first issue presented by the parties.

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INTEREST OF *AMICI*

This case presents important questions regarding the relationship between 42 U.S.C. § 1983 and 28 U.S.C. § 2254, and the federal court's power in a § 1983 action to determine the legality of a state conviction. *Amici* are states that have an interest in finality, the enforcement of their state laws, and the orderly and proper administration of their criminal justice systems. Additionally, *amici* have comity concerns regarding federal courts determining the legality of state court convictions in § 1983 actions.

This brief is submitted by *amici* through their respective Attorneys General in accordance with Rule 37.5 of the Rules of the Supreme Court.

SUMMARY OF ARGUMENT

This case presents the issue whether a state prisoner can circumvent the various limitations on consideration of habeas corpus petitions by challenging the legality of his custody via a § 1983 action that seeks only declaratory and monetary relief, but does not directly seek release from confinement. In previous cases, this Court indicated that habeas claims may be pursued only via 28 U.S.C. § 2254, while damages claims can be pursued via a 42 U.S.C. § 1983 action. This Court has also indicated that § 1983 petitioners need not exhaust certain administrative remedies. Based upon these cases, Petitioner argues that, so long as he does not list release

from or shortening of his sentence as his desired relief, he can file a § 1983 action attacking the validity of his state conviction without exhausting state remedies. Petitioner's claims, however, must be considered in light of the limitations on habeas and on § 1983 actions.

Congress and this Court have imposed several requirements a state prisoner seeking habeas relief must satisfy before the federal court will consider the merits of his claim. These limitations insure that the state court is given the first opportunity to consider and correct any constitutional errors affecting the validity of the prisoner's conviction. They are necessitated by the States' interest in the finality of the convictions from their courts, state and federal interest in the most efficient allocation of judicial resources, and comity and federalism.

This Court has also limited federal consideration of ongoing criminal prosecutions pursuant to the *Younger*[2] doctrine of non-interference with ongoing state proceedings. The Court has applied the *Younger* doctrine in several circumstances in § 1983 actions where there were ongoing criminal proceedings, and the petitioner was seeking declaratory or injunctive relief. These decisions were based upon the equitable principle that the court should not act in equity where the claimant has an

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2. *Younger v. Harris*, 401 U.S. 37 (1971).

adequate remedy at law. They were also supported by notions of comity and federalism. The Court has further limited the scope of § 1983 by holding that the doctrines of res judicata and collateral estoppel apply to consideration of issues originating in state court.

This Court has indicated that it has yet to decide the applicability of *Younger*, and resulting exhaustion requirements, on § 1983 damages actions in which a state prisoner challenges the validity of his conviction. If exhaustion is not required, a prisoner can avoid the effect of collateral estoppel and res judicata by bringing his § 1983 action before he has raised the underlying issues in available state proceedings. More importantly, a prisoner will be able to completely circumvent the habeas requirements by urging unexhausted issues in a § 1983 action seeking only damages or declaratory judgment, then using the federal court's decision on the matter to seek release from the state or federal court. The success of such maneuvers frustrates the federalism, comity, and finality concerns that led this Court and Congress to develop limitations on habeas corpus and § 1983 in the first place. The Court should apply *Younger*, and hold that the prisoner must exhaust available state remedies for challenging his conviction before the federal court will consider his § 1983 claims arising from the state criminal investigation and prosecution.

ARGUMENT

PERMITTING A FEDERAL COURT TO CONSIDER A STATE PRISONER'S § 1983 ACTION CHALLENGING THE VALIDITY OF HIS CONVICTION WITHOUT REQUIRING THE PRISONER TO EXHAUST STATE COURT REMEDIES EFFECTIVELY NULLIFIES THE LIMITATIONS ON HABEAS CORPUS AND IMPINGES ON IMPORTANT STATE INTERESTS.

Congress has created a federal forum, via 42 U.S.C. § 1983,[3] for petitioners claiming a violation of their constitutional rights by a person acting under color of state law. There is also a federal forum, via a petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254,[4] for

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3. Section 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. 28 U.S.C. § 2254(a) provides in full:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

continued . . .

prisoners claiming that they are being held in state custody in violation of their constitutional rights. This case requires the Court to evaluate the interplay of these two schemes in order to determine the issue characterized by one court as

> whether a state prisoner may challenge the validity of his conviction in a district court without having exhausted available state remedies upon the expedient of confining himself to a § 1983 claim for monetary damages, a declaratory judgment, and prospective injunctive relief, with a seemingly deliberate omission of a request for immediate release from his imprisonment.

Hamlin v. Warren, 664 F.2d 29, 30 (4th Cir. 1981), *cert. denied*, 455 U.S. 911 (1982).

A. Review of Prior Decisions Relied Upon by Petitioner.

Over two decades ago, this Court considered the intersection of § 1983 and § 2254 in *Preiser v. Rodriguez*, 411 U.S. 475 (1973). The Court first examined the scope and purpose of the writ of habeas corpus, and noted:

> [T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the

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4. *continued*

28 U.S.C. § 2241(c) provides in pertinent part:

> The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody in violation of the Constitution or laws or treaties of the United States . . . .

> traditional function of the writ is to secure release from illegal custody.

Preiser, 411 U.S. at 484. Thus, the writ is an appropriate vehicle for a prisoner to claim "that he was denied his constitutional rights at trial." *Preiser*, 411 U.S. at 486 (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)). The Court noted that habeas claims fall within the broad language of § 1983. *Preiser*, 411 U.S. at 489. It held, however, that habeas was the exclusive means a prisoner could use to challenge the fact or duration of his confinement, regardless of whether that challenge was to the constitutionality of his underlying state conviction and sentence, or was to the constitutionality of some state administrative action. *Id.*

The Court held that this result was mandated because the more specific habeas provisions required a prisoner to exhaust his available state remedies before seeking federal habeas relief. *Preiser*, 411 U.S. at 489. It noted that the exhaustion requirement relied upon by it and dictated by Congress served to insure federal courts show "a proper respect for state functions." *Preiser*, 411 U.S. at 491 (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). In the context of challenges to criminal convictions, it was designed "to avoid the unnecessary friction between the federal and state court systems that would result if a lower federal court upset a state court conviction without first giving the state court system an

opportunity to correct its own constitutional errors." *Preiser*, 411 U.S. at 490. Similarly, in the context of challenges to the actions of prison officials, it recognized that the state court system should be given "the first opportunity to correct the errors made in the internal administration of their prisons." *Preiser*, 411 U.S. at 492.

Although not presented with the issue, in *Preiser* this Court stated in dicta that a state prisoner seeking damages "is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or more speedy relief." 411 U.S. at 494. After briefly summarizing that habeas proceedings were inappropriate and unavailable for damages claims, this Court indicated that a state prisoner could bring a § 1983 action for damages without exhausting state remedies. *Id.*

This Court apparently applied the *Preiser* dicta in *Wolff v. McDonnell*, 418 U.S. 539 (1974). In *Wolff*, prisoners brought a § 1983 action claiming prison procedures resulted in the unconstitutional deprivation of good time credits, and seeking damages and injunctive restoration of their credits. 418 U.S. at 554. This Court held that the claim for restoration of good time credits was prohibited by *Preiser*, but that the prisoners could "go forward" with their damages claim. *Id.*

More recently, this Court considered the issue of whether a petitioner was required to exhaust available state administrative remedies before bringing a § 1983 action challenging her employer's dismissal of her. *Patsy v. Board of Regents*, 457 U.S. 496, 498 (1982). In evaluating the issue, the Court noted that legislative purpose is the paramount consideration in determining when exhaustion is required. *Patsy*, 457 U.S. at 501–02. After examining legislative history, this Court concluded that Congress had not intended petitioners to be required to exhaust administrative remedies in the context there presented. *Patsy*, 457 U.S. at 516.

Relying primarily upon these decisions, Petitioner argues in the present case that the type of relief sought is the dispositive issue in determining whether a prisoner must exhaust state remedies before challenging the validity of his state conviction. Petitioner admits that, pursuant to 28 U.S.C. §2254(b), a state prisoner must exhaust state remedies before he can challenge the validity of his conviction in a federal habeas proceeding. He contends, however, that this rule applies only where the prisoner asks for immediate or speedier release from custody. According to Petitioner, so long as the prisoner does not specifically ask for release—arguably the most logical and complete relief from an unconstitutional conviction—he is free to challenge the validity of his state

conviction in a § 1983 action without exhausting state remedies. Petitioner's claim, however, must be considered in a broader legal universe than the one relied upon in his brief. Instead, it must be evaluated in light of this Court's jurisprudence in both habeas and § 1983 contexts.

B. Federal Habeas Corpus.

1. *A state prisoner's access to federal court on habeas is governed by several limitations.*

The federal habeas corpus statute, 28 U.S.C. § 2254, permits federal collateral review of state court judgments for the sole purpose of determining whether the state prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). When a federal question is involved, a prisoner may directly challenge a state conviction via a petition for writ of certiorari. 28 U.S.C. § 1257. Once direct review is completed, however, "a presumption of finality and legality attaches to the conviction and sentence." *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983). Thus, collateral review via federal habeas corpus exists only as a secondary and limited avenue to ensure that constitutional rights are observed. *Id.* The remedy "is designed to guard against extreme malfunctions in the state criminal justice systems." *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979) (Stevens, J., concurring in

judgment). It is not designed to provide a federal forum to relitigate state trials. *Barefoot*, 463 U.S. at 887.

Over the years, this Court and Congress have established various requirements a state prisoner must satisfy before the federal court will exercise its equity jurisdiction and consider a collateral claim for a writ of habeas corpus from state custody. First, the prisoner must exhaust all available state remedies. 28 U.S.C. § 2254(b), (c);[5] *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (federal district court must dismiss habeas petition containing unexhausted claims). To satisfy this exhaustion requirement, the prisoner must comply with the State's procedural requirements and fairly present his claim to the State's highest court in a procedurally appropriate manner. *Coleman v. Thompson*, 111 S. Ct. 2546,

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5. Section 2254 provides in relevant part:

> (b) An application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted *unless it appears the applicant has exhausted the remedies available in the courts of the State*, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
>
> (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(Emphasis added).

2554–55 (1991); *see Castille v. Peoples*, 489 U.S. 346 (1989). The federal court will excuse him from this requirement only if he can demonstrate cause and prejudice for his procedural default, or that the failure to consider his claims will result in manifest injustice. *Coleman*, 111 S. Ct. at 2565. In addition, the prisoner must fully develop the relevant factual record before the state court. *Keeney v. Tamayo-Reyes*, 112 S. Ct. 1715, 1719 (1992) (prisoner not entitled to supplement factual record developed in state court unless he satisfies the cause and prejudice standard).

The prisoner must present in his first habeas petition all available claims he wishes to assert. 28 U.S.C. § 2254, Rule 9(b)[6]; *McCleskey v. Zant*, 499 U.S. 467, 489–96 (1991) (absent showing of cause and prejudice, federal court will dismiss a claim as an abuse of the writ if the prisoner could have urged it in a previous petition, but did not). As a general rule, a prisoner is not given the benefit of new constitutional rules

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6. Rule 9(b), Rules Governing Habeas Corpus Proceedings, provides:

> A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, *if new and different grounds are alleged*, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

28 U.S.C. § 2254 Rule 9(b)(Emphasis added).

developed since his conviction became final. *Teague v. Lane*, 489 U.S. 288, 310 (1989). Finally, on collateral habeas review, a prisoner must establish that the claimed constitutional trial error actually prejudiced him,[7] while on direct review, the State bears the burden of establishing that the error was harmless beyond a reasonable doubt.[8] *Brecht v. Abrahamson*, 113 S. Ct. 1710 (1993) (habeas petitioner must prove the error "had substantial and injurious effect or influence in determining the jury's verdict").

2. *Limitations on habeas review serve important state and federal interests.*

This Court has enunciated many reasons for these limitations on the federal court's exercise of its equitable jurisdiction in habeas actions:

> The reason most frequently advanced in our cases for distinguishing between direct and collateral review is the States' interest in the finality of convictions that have survived direct review within the state court system. We have also spoken of comity and federalism. The States possess primary authority for defining and enforcing the criminal law. In criminal trials they hold the initial responsibility for vindicating constitutional rights. Federal intrusions into state criminal trials frustrate both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights. Finally, we have recognized that liberal allowance of the writ degrades the prominence of the trial itself, and at the same time

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7. *See Kotteakos v. United States*, 328 U.S. 750 (1946).

8. *See Chapman v. California*, 372 U.S. 335 (1963).

encourages habeas petitioners to relitigate their claims on collateral review.

Brecht, 113 S. Ct. at 1720–21 (internal citations and quotations omitted); *see also Coleman*, 111 S. Ct. at 2554 (state procedural default rule prevents prisoners from doing "an end run around the limits of this Court's jurisdiction" by prohibiting claims precluded on direct review by adequate and independent state grounds); *Coleman*, 111 S. Ct. at 2564 (procedural default rule respects States' interest in their procedural rules, which are designed to "channel, to the extent possible, the resolution of various types of questions to the stage of the judicial process at which they can be resolved most fairly and efficiently" (quoting *Reed v. Ross*, 468 U.S. 1, 10 (1984)); *McCleskey*, 111 S. Ct. at 1468–69 (abuse of the writ doctrine promotes procedural regularity, recognizes that "'a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks,'" (quoting *Sanders v. United States*, 373 U.S. 1, 17 (1963)), and takes into consideration the heavy burden federal collateral litigation places upon scarce federal judicial resources); *Teague*, 489 U.S. at 310 (prohibition against announcing new constitutional rule on collateral review prevents States from being continually forced "to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards); *Rose*, 455 U.S. at 518–20 (exhaustion

requirement "recognizes that State and federal 'courts [are] equally bound to guard and protect rights secured by the Constitution,'" (quoting *Ex Parte Royall*, 117 U.S. 241, 251 (1886)), "protect[s] the state courts' role in the enforcement of federal law," prevents unseemly federal court disturbance of state convictions before state courts have had a full opportunity to pass upon and correct any constitutional violations, encourages the development of a more complete factual record, and reduces piecemeal litigation).

C. § 1983 ACTIONS.

1. *Application of the Younger doctrine.*

Like habeas actions, § 1983 actions do not provide unlimited access to the federal courthouse. In *Younger v. Harris*, 401 U.S. 37 (1971), this Court held that a federal court should not enjoin a pending state criminal proceeding except under certain enunciated circumstances.[9] 401 U.S. at 41 (federal stay of ongoing state prosecution reversed because it violated "the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances"). That same day, the Court extended this rule by holding that, absent those same special

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9. The *Younger* doctrine of federal non-interference does not apply where the petitioner establishes that "the state proceeding is motivated by a desire to harass or is conducted in bad faith," or a statute being challenged is "flagrantly and patently violative of express constitutional prohibitions" in its entirety. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975) (internal quotations omitted).

circumstances set forth in *Younger*, a federal court should not consider the merits of a claim for declaratory judgment regarding the constitutionality of a state statute at issue in an ongoing criminal proceeding. *Samuels v. Mackell*, 401 U.S. 66, 73 (1971) ("in cases where the state criminal prosecution was begun prior to the federal suit, . . . where an injunction would be impermissible under these [equitable] principles, declaratory relief should ordinarily be denied as well").

Since that time, the Court has extended the application of the *Younger* doctrine to § 1983 actions. For example, unless the petitioner satisfies the *Younger* exceptions, the federal court will abstain from considering his § 1983 claim for injunctive and declaratory relief until he exhausts his state appellate remedies in the already initiated state proceedings. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609 (1975); *see* 420 U.S. at 605–06 (petitioner "should not be permitted the luxury of federal litigation of issues presented by ongoing state proceedings, a luxury which . . . is quite costly in terms of the interests which *Younger* seeks to protect"). The Court specifically distinguished this holding from prior decisions stating that the § 1983 petitioner need not first initiate state proceedings on related state claims, nor exhaust state judicial remedies in order to challenge an administrative action, by noting that those cases "did not deal with situations in which the state judicial process has been

initiated." *Huffman*, 420 U.S. at 609 n.21. Similarly, this Court held that a federal court should not consider a § 1983 action for injunctive relief from contempt proceedings where the petitioners "had an *opportunity* to present their federal claims in the state proceedings." *Juidice v. Vail*, 430 U.S. 327, 337 (1977) (emphasis in original, noting that "[n]o more is required to invoke *Younger* abstention").

2. *The limitations on § 1983 actions serve important state interests similar to those served by habeas limitations.*

As with its habeas jurisprudence, this Court has listed several reasons supporting the *Younger* abstention policy. Initially, the Court relied upon the doctrines of equity, comity and federalism. Pursuant to equity doctrines, "courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable belief." *Younger*, 401 U.S. at 43–44. Pursuant to comity, restraint from interfering in criminal prosecutions is supported by

> a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

Younger, 401 U.S. at 44. In conjunction, the federalism concept promotes sensitivity to the States' legitimate interests, and endeavors to vindicate

federal rights and interests "in ways that will not unduly interfere with the legitimate activities of the States." *Id.*

In applying *Younger* to § 1983 actions and requiring petitioners to exhaust state appellate remedies before seeking § 1983 relief, the Court noted that

> "interference with a state judicial proceeding prevents the state . . . from effectuating its substantive policies, . . . [and] from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies."

Huffman, 420 U.S. at 604. Moreover, the interference "results in duplicative legal proceedings, and can readily be interpreted 'as reflecting negatively upon the state courts' ability to enforce constitutional principles.'" *Huffman*, 420 U.S. at 604 (quoting *Steffel v. Thompson*, 415 U.S. 452, 462 (1974)). Thus, the Court did "not understand why the federal forum must be available prior to completion of the state proceedings in which the federal issue arises." *Huffman*, 420 U.S. at 606. The Court reiterated these reasons when dismissing a § 1983 action where the petitioners failed to avail themselves of available state remedies. *Juidice*, 430 U.S. at 334–37.

3. *§ 1983 relief is further limited by the doctrines of res judicata and collateral estoppel.*

The Court has also held that an additional limitation applies to § 1983 actions. Federal courts generally have "accorded preclusive effect to issues decided by state courts." *Allen v. McCurry*, 449 U.S. 90, 95 (1980). This rule "reduce[s] unnecessary litigation and foster[s] reliance on adjudication," and "promote[s] the comity between state and federal courts that has been recognized as a bulwark of the federal system." *Allen*, 449 U.S. at 95–96 (citing *Younger*, 401 U.S. at 43–45). It also is required by Congress's mandate that the federal court give full faith and credit to state court judgments. 28 U.S.C. § 1738,[10] *quoted in Allen*, 449 U.S.

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10. 28 U.S.C. § 1738 provides in relevant part:

> The . . . judicial proceedings of any court of any State . . . shall have the same full faith and credit in every court within the United States and it Territories and Possessions as they have by law or usage in the courts of such State . . . .

at 96. Thus, collateral estoppel and res judicata principles[11] apply in § 1983 actions to preclude relitigation of issues decided in prior state criminal proceedings where the petitioner has had a full and fair opportunity to litigate the federal issue in state court. *Allen*, 449 U.S. at 101–04.

D. *YOUNGER* MUST BE APPLIED TO REQUIRE EXHAUSTION IN STATE PRISONER § 1983 ACTIONS THAT CHALLENGE THE FACT OR DURATION OF CONFINEMENT TO PREVENT CIRCUMVENTION OF THE HABEAS LIMITATIONS AND FRUSTRATION OF THE POLICIES UNDERLYING THOSE LIMITATIONS.

This Court has not yet reached the outer bounds of the application of the *Younger* doctrine to § 1983 claims. In *Juidice*, the Court stated in a footnote that it "intimate[d] no opinion as to the applicability of *Younger–Huffman* principles to a § 1983 action seeking only [damages] in the District Court." 430 U.S. at 339 n.16. Seven years later, the Court specifically noted that it has had "no occasion to decide if a Federal

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11. The Court has defined " res judicata" and "collateral estoppel" as follows:

> Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.

Allen, 449 U.S. at 94 (citations omitted).

District Court should abstain from deciding a § 1983 suit for damages stemming from an unlawful conviction pending the collateral exhaustion of state-court attacks on the conviction itself." *Tower v. Glover*, 467 U.S. 914, 923 (1984). More recently, two Justices have stated that, under *Younger*, a federal court should abstain from considering a §1983 claim seeking monetary relief pending completion of the state criminal proceedings from which the claim arose. *Deakins v. Monaghan*, 484 U.S. 193, 208–10 (1988) (White, J. concurring). The Court itself, however, only stated in *Deakins* that it had no need to "decide the extent to which the *Younger* doctrine applies to a federal action seeking only monetary relief." 484 U.S. at 202.

If *Wolff* stands for the proposition that a state prisoner can avoid exhaustion requirements by challenging his conviction in a § 1983 action that seeks only monetary relief, there would be no explanation for this Court's repeated references to the fact that it was declining to consider the applicability of *Younger* principles to § 1983 damages claims arising from criminal prosecutions. Thus, the question must necessarily be an open one. The resolution of it requires an examination of the effect of the approach proposed by Petitioner.

Without an exhaustion requirement, a state prisoner may bring a claim for damages or declaratory judgment that requires the federal court

to evaluate issues not yet considered by the state courts involving the criminal investigation and prosecution, the resolution of which necessarily call into question the validity of the underlying conviction. For example, in this case, Petitioner asserts Respondents violated his constitutional rights by conducting an illegal search and illegal voice identification procedure, and by committing a *Brady*[12] violation in destroying evidence. For relief, he seeks a declaration that the criminal investigation was unconstitutional. He also seeks compensatory damages for the income losses caused by his confinement, and punitive damages. To grant Petitioner's compensatory damages request for losses resulting from his confinement, the federal court must necessarily determine that Petitioner's confinement is wrongful. Moreover, while consideration of the punitive damage and declaratory judgement claims does not require the federal court to necessarily conclude that the conviction is wrongful, it too calls the validity of the conviction into question.

If a prisoner's claims were previously presented in the state court during the criminal prosecution, and were decided adverse to the prisoner, presumably the doctrine of collateral estoppel will prevent that prisoner from relitigating those claims in a subsequent § 1983 action. If the claims

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12. *Brady v. Maryland*, 373 U.S. 83 (1963).

were not litigated in the prior proceedings, or are of the type appropriately brought only in post-conviction proceedings that the prisoner has not yet pursued because he has not been required to exhaust state remedies, the prisoner may argue that there is no state judgment to which estoppel may apply. Thus, he avoids the estoppel effects of having the state court consider the issue in the first instance.

The state prisoner also escapes the habeas limitations by challenging his conviction in a § 1983 action. A prisoner successfully avoids the exhaustion requirements of *Rose* and *Coleman* if he is not required to exhaust his state remedies. Because this Court has had no occasion to determine whether *Teague* applies in this circumstance, a prisoner will be free to urge the federal court to develop a new constitutional rule entitling him to relief. Moreover, because this is not technically a habeas action, he will also be free to argue that the *McCleskey* abuse of the writ doctrine is inapplicable, entitling him to bring successive § 1983 actions raising additional claims, bound only by the statute of limitations. The prisoner, having not exhausted his claims in state court, will also presumably be free to develop his factual record in federal court, thus avoiding *Tamayo-Reyes*. Additionally, the prisoner may ignore *Brecht* and argue that the court should apply the *Chapman* rather than *Kotteakos* standard to determine whether any constitutional error was harmless.

Depending upon the extent to which a prisoner's claims have already been litigated in state court, the federal court may reach the merits of some of the prisoner's claims, and decide them in his favor. If the federal court actually determines that the prisoner has been wrongfully convicted, it may deem it appropriate to order his release from custody. *See Samuels*, 401 U.S. at 72 (indicating that district court might grant an injunction as further necessary relief to effectuate a declaratory judgment, pursuant to 28 U.S.C. §§ 2202 and 2283). If it does so, the prisoner has successfully manipulated the system to gain release—the traditional function of habeas corpus—without satisfying the exhaustion requirement or being bound by the other limitations to habeas. Such a result is clearly contrary to *Preiser*, and congressional intent.

If the federal court does not order his release as part of the relief in his § 1983 action, a prisoner may trot into state court and raise the very claims he has just litigated in the federal forum, his successful § 1983 judgment in hand. The state court is then faced with a number of possibilities. If res judicata applies, the State court will be forced to agree with the federal court's conclusion, find that the conviction is invalid, and release the prisoner. Once again, the petitioner has successfully gained release while avoiding *Preiser* and § 2254.

This is the result the concurrence anticipated and sought to avoid in *Deakins*. In *Deakins*, petitioners, some of whom were under state criminal indictment and some whom were only under state criminal investigation, brought a § 1983 action seeking, among other things, damages based upon several police officers' execution of a search warrant. 484 U.S. at 205 (White, J., concurring). In his concurrence, Justice White, joined by Justice O'Connor, held that *Younger* required the district court to refrain from deciding the damages claim "until the conclusion of the pending state criminal proceedings." *Deakins*, 484 U.S. at 208–10. Justice White explained his decision as follows:

> As the *Younger* decision itself recognized, it has long been the rule that the federal courts should not interfere with or pre-empt the progress of state criminal proceedings. A judgment in the federal damages action may decided [sic] several questions at issue in the state criminal proceeding. It may determine, for example, that certain evidence was seized contrary to the Fourth Amendment, or that an interrogation was conducted in violation of the Sixth Amendment, or that Fifth Amendment rights were somehow violated. In fact, in this case, such claims —and many more—are all being pressed by respondents in their § 1983 action. If the claims the Court remands today were disposed of on the merits by the District Court, this decision would presumably be owed res judicata effect in the forthcoming state criminal trial of respondents. The potential for federal–state friction is obvious.

Deakins, 484 U.S. at 208 (internal citations and quotations omitted).

Petitioner argues that res judicata will not bind the State to the federal court's § 1983 judgment because the State is not technically a party to the § 1983 action.[13] Assuming Petitioner's assertion is correct, the state court has nevertheless been deprived of the opportunity to rule in the first instance on constitutional issues affecting the validity of the conviction or, as in this instance presented by Petitioner's claims, on the very validity of the conviction itself. This usurpation of the issues by the federal court interferes with the States' efforts to effectuate their substantive policies, and frustrates their attempts to exercise their sovereign power in the administration of their criminal justice system. It also reflects negatively on the states' court systems, because it creates the appearance that the state court was unwilling or unable to consider a prisoner's constitutional claim.

The state court, faced with the federal determination of the very questions now before it, may feel pressured to accept the federal court's conclusions, even if res judicata did not force it to do so. If it follows the federal court's decision, the prisoner has avoided the *Preiser* and § 2254 exhaustion requirement, yet gained release. If the state court does not follow the federal court's decision, the prisoner, having now exhausted his state remedies, can then bring a federal habeas action before the very court

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13. It is not necessary for this Court to decide that issue to reject Petitioner's overall approach.

that has already decided that his conviction is invalid. It is unlikely that court will reach a contrary conclusion the second time around, and the prisoner once again secures release without having given the State the opportunity to rule on the claim in the first instance.

Regardless of the exact scenario followed, the result is consistently the same. If a prisoner is not required to exhaust his state remedies before bringing a § 1983 action raising issues that call into question the validity of his conviction—the fact or duration of his confinement—no matter what forms of relief he directly requests in that § 1983 action, he may use that federal ruling to eventually obtain release. He will also avoid the other limitations of habeas. This type of end run around habeas procedures cannot be permitted. If this Court accepts Petitioner's approach, state prisoners assuming that the federal forum will be more friendly will be able to frustrate *amici's* and other States' interest in the orderly administration of their criminal justice system, and their good faith attempts to exercise their sovereign power to punish criminal offenders while honoring constitutional rights. This does not show a proper respect for the States, and will necessarily create friction with the federal courts. It is also contrary to Congress's intent, clearly indicated in § 2254(b), and this Court's habeas jurisprudence.

Because of the potential that a successful § 1983 judgment will be used to gain release, this Court should require a state prisoner raising claims based upon the criminal investigation and prosecution underlying his conviction to exhaust available state remedies for challenging his conviction to the same extent that he would be required to do before bringing a habeas action. Because of the estoppel doctrine, the prisoner will generally be bound by the state court's determination of the merits of his claims. This rule will ensure the prisoner does not also circumvent the other habeas limitations. Because claims will not be relitigated in the § 1983 action, the prisoner will have no occasion to argue that a new constitutional rule should be applied. Moreover, there will be no need to supplement the factual record unless the prisoner has been successful on a claim in state court. If so, the factual record may be supplemented to the extent needed to determine damages or other relief. This supplementation, however, will not be considered to determine the merits of the claim, because the state court will have already ruled on that. Moreover, the state court will have already determined whether the alleged constitutional error was harmless, thus not calling into question what harmless error standard the federal court should apply. Finally, the prisoner will have no motivation to bring successive § 1983 actions raising new claims, because he will already know

which claims will entitle him to relief—only those claims he succesfully urged in state court.

To ensure the orderly administration of justice, protect the States' interest in the enforcement of their criminal laws, and prevent circumvention of the limitations on habeas actions and the consequent frustration of all the concerns requiring those limitations, this Court should apply the *Younger* doctrine to state prisoners' § 1983 actions that raise issues effecting or calling into question the validity of their state conviction, and hold that a federal court will not consider the action, regardless of the type of relief being sought, until the prisoner exhausts available state remedies to challenge the underlying conviction.

CONCLUSION

While habeas corpus and § 1983 necessarily intersect, this Court has held that habeas is the exclusive way by which a state prisoner may challenge in federal court the fact or duration of his confinement. Additionally, this Court and Congress have imposed limitations on when the federal court will consider the merits of a habeas claim. Petitioner asks this Court to adopt an analysis that would enable state prisoners to raise habeas issues in federal court without satisfying the requirements limiting habeas. The prisoner need only manipulate the system by labeling his action "1983" and not including in it a request for habeas relief—release

or a reduction in sentence. He may then use his § 1983 judgment to seek and obtain the very relief claim he omitted from his § 1983 action—release or a reduction in sentence. Such a result offends the very principles and concerns that led to the development of the *Younger* doctrine and limitations on habeas in the first place. This Court should therefore require a state prisoner to exhaust available state court remedies for challenging the validity of his conviction before the federal court will consider his § 1983 action based upon a challenge to the criminal investigation and prosecution leading to his conviction.

Respectfully submitted,

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